IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.L.P..No. 742 of 2007()

CC.1073/2004 of J.M.F.C.-I, CHENGANNUR

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PETITIONER/COMPLAINANT:

K.E.PHILIPOSE,KOCHAREEKKETHU VEEDU,
VENMONY MURI,CHENGANNUR TALUK.

BY ADV. SRI.N.ASHOK KUMAR

RESPONDENTS: COMPLAINANT & STATE

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1. THOMAS GEORGE,THUNDIYIL VEEDU,
K.P.9/918,PERSAN NAGAR,KUDUPPANAKKUNNU,
PEROORKADA P.O,THIRUVANANTHAPURAM.

2. STATE OF KERALA REP.BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA,ERNAKULAM.

R2-BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL. L.P.NO.742 OF 2007

Dated this the 5th day of October, 2007.

O R D E R

This is an application for special leave to appeal against the judgment in C.C.No.1073/2004 on the file of the Judicial Magistrate of First Class-I, Chengannur. As per the complaint filed by the petitioner/complainant, it was alleged that the 1st respondent/accused had borrowed an amount of Rs.1,50,000/= from the petitioner/complainant and in discharge of the said amount, Ext.P1 cheque dated 7..10.2004 has been issued. However, when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of found with the account of the 1st respondent. After complying with the statutory provisions regarding notice etc. and on seeing that the amount covered by the cheque has not been paid by the 1st respondent, the complaint has been filed before the court alleging that the 1st respondent had committed an offence punishable under Section 138 of the N.I.Act. To prove the complainant's case, he t himself was examined as PW1 and relied on Exts.P1 to P8. On closing the evidence adduced for and on behalf of the petitioner/complainant, the 1st respondent was

questioned under Section 313 of the Code. Denying the allegations in the complaint, the 1st respondent had stated that the cheque in question was not issued by him to the complainant, whereas, the same was given to DW2, one M.D. Varghese, who is none else the cousin of the the complainant. Further case of the 1st respondent was that the cheque in question was given as a security when he had received the amount of Rs.30,000/= from the said Varghese. To prove his case, the 1st respondent examined two witnesses and produced Exts.D1 to D9. After considering the evidence, the trial court found that the case set up by the petitioner against the 1st respondent has not been proved as the petitioner failed to prove that the cheque in question was issued in favour of him for the discharge of any amount as alleged in the complaint. At the same time, the trial court relying on the evidence of DWs 1 and 2, out of whom DW2 was the said M.D. Varghese to whom the cheque had given by DW1- the 1st respondent, the trial court found that the case set up by the 1st respondent is more probable. In the above circumstances, the trial court acquitted the 1st respondent. Against which, this special leave to appeal has been attempted.

After going through the entire evidence and the judgment of

the trial court and on hearing the counsel appearing for the petitioner, this Court see no ground to interfere with the judgment of the trial court. Accordingly, leave to appeal stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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